IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINETEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NOs : 19666, 19727, 20385, 20387, 21292 and 21300 of 2003

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WRIT PETITION NO : 19666 of 2003

Between:

Smt. M. Vinatha, W/o. R. Upendranath Reddy, Working as Executive Engineer, Office of the Engineer-in-Chief, Panchyat Raj, Erramanjil, Hyderabad.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Represented by its Special Chief Secretary, Panchyat Raj and Rural Development Department, Secretariat, Hyderabad.
2 The Engineer-in-Chief, Panchyat Raj, Erramanjil, Hyderabad.
3 S. Bhavanna, S/o. Narasaiah, Asst. Executive Engineer, Office of the Deputy Executive Engineer (PR), RWS Sub-Division, Sangareddy, Medak District.
4 T. Jagadeshwar,S/o.Veera Sangappa, Assistant Executive Engineer, Office of the Superintendent Engineer, Panchyat Raj Circle, Medak, Medak District.
5 P. Chandra Mouli, S/o. Balaiah, Asst. Executive Engineer, Office of the Superintending Engineer, Panchyat Raj Circle, Medak, Medak District.
6 Ch. Benson, S/o. Prabhakar Rao, Assistant Engineer, Office of the Superintending Engineer, Panchyat Raj, Mahaboobnagar, Mahaboobnagar District.

7 Y. Sangameshwar, S/o.Pochaiah, Assistant Executive Engineer, Office of the Deputy Executive Engineer, Panchayat Raj, RWS, Ramayampet, Medak District.
8 Prasanna Kumar, S/o. K.C.S. Subba Rao, Assistant Executive Engineer, Office of the Mandal Parishad, Alair, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari calling for all the connected records including the judgment in O.A. No. 6223 of 2002 dated 9.9.2003 and quash the same as illegal, improper, unjust, arbitrary and contrary to law.

Counsel for the Petitioner: MR.GANGAIAH NAIDU APPEARING FOR MR.K.G.KRISHNA MURTHY

Counsel for the Respondent Nos.1 and 2: G.P.FOR SERVICES-II

Counsel for the Respondents 3 to 6 and 8: MR.A.RAMGOPAL RAO

Counsel for the Respondent No.7: None appeared.

WRIT PETITION NO : 19727 of 2003

Between:

K.Shyam Sunder s/o.Ukkas, Office of the Assistant Executive Engineer, PRMP Gurrampode, Nalgonda District

..... PETITIONER

AND

1. The Government of Andhra Pradesh, represented by its Special Chief Secretary, Panchayat.Raj & Rural Development Department Secretariat, Hyderabad.
2 The Engineer-in-Chief, Panchayat Raj, Erramanzil Hyderabad.
3 Smt.N.Vinitha, AssistantExecutive engineer, Office of the Engineer-in- Chief, Panchayat Raj, Erramanzil, Hyderabad.
4 S.Bhavanna, s/o.Narasaiah, Assistant Executive Engineer, Office of the Executive Engineer (PR) RWS Sub-Division, Sanga Reddy, Medak District.
5 T.Jagadeshwar, S/o.Veera Sangappa, Assistant Executive Engineer, Office of the Deputy Executive Engineer, Panchayat Raj Sub-Division, Jogipet, Medak District.
6 P.Chandra Mouli, S/o.Balaiah, Assistant Executive Engineer, Office of the Superintending Engineer Panchayat Raj Circle, Medak, Medak District
7 Ch.Benson, S/o.Prabhakar Rao, Assistant Executive Engineer, Office of the Superintending Engineer P.Raj Circle, Mahaboobnagar, Mahaboobnagar District.
8 Y.Sangameshwar, S/o.Pochaiah, Assistant Executive Engineer, Office of the

Deputy Executive Engineer, Panchayat Raj RWS Ramyampet, Medak District.
9 K.Prasanna Kumar, S/o.K.C.S.Subba Rao, Assistant Executive Engineer,
Office of the Mandal Parishad, Alair, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari after calling for the records from A.P. Administrative Tribunal in O.A.No.6223/2002, O.A.no.2923/2002 and O.A.no.2878/2002, and declare the Common Order dt.09.09.2003 passed in O.A.No.6223/2002, O.A.No.2923/2002 and O.A.No.2878/2002 as illegal, arbitrary, unjust, contrary to G.O.Ms.No.313, dated 17.08.2002 issued by the 1st respondent, and in violation of Articles 14,16(4-A) and 21 of the Constitution of India, consequently set-aside the Common Order dated 09.09.2003 passed in O.A.No.6223/2002 O.A.No.2923/2002 and O.A.No.2878/2002 and to pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.PADMANABHA RAO

Counsel for the Respondent Nos.1 and 2: G.P. FOR SERVICES-II.

Counsel for the Respondent Nos.4 to 7 and 9: MR.M.RAMGOPAL RAO

Counsel for the Respondents 3 and 8: None appeared.

WRIT PETITION NO : 20385 of 2003

Between:

K.Shyam Sunder, S/o.Lukkas, Assistant Executive Engineer,
Office of the Assistant Executive Engineer, PRMP, Gurrampode,
Nalgonda Dist,

..... PETITIONER

AND

1. The Government of Andhra Pradesh, represented by its Special Chief Secretary, P.Raj & Rural Development Department, Secretariat, Hyderabad.

2. The Engineer-in-Chief, Panchayat Raj, Erramanzil, Hyderabad.

3. Smt.N.Vinitha, Assistant Executive Engineer, Office of the Engineer-in-Chief, Panchayat Raj, Erramanzil, Hyderabad.

4. A.T.M.A.Mujeeb, S/o.KMA Muqtadir, Assistant Executive Engineer,

Divisional Office, Panchayat Raj, Bhuvanagiri, Nalgonda District.
5 B.Jawahar Reddy, S/o.Vithal Reddy, Assistant Executive Engineer,
CIEFL, Tarnaka, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari after calling for the records from A.P. Administrative Tribunal in O.A.No.6223/2002, O.A.No.2923/2002 and O.A.2878/2002 and declare the Common Order dated 9-9-2003 passed in O.A.No.6223/2002, O.A.No.2923/2002 and O.A.No.2878/2002 as illegal, arbitrary, unjust, contrary to G.O.Ms.No.313, dated 17-8-2002 issued by the 1st respondent, and in violation of Articles 14,16 (4-A) and 21 of the Constitution of India, consequently set-aside the Common Order dated 9.9.2003 passed in O.A.No.6223/2002 O.A.No.2923/2002 and O.A.No.2878/2002.

Counsel for the Petitioner: MR.V.PADMANABHA RAO

Counsel for the Respondent Nos.1 and 2: G.P. FOR SERVICES-II.

Counsel for the Respondents 3 and 5: None appeared.

Counsel for Respondent No.4: MR.M.RAJA MALLA REDDY.

WRIT PETITION NO : 20387 of 2003

Between:

K.Shyam Sunder, S/o.Lukkas, Assistant Executive Engineer, Office of the Assistant Executive Engineer, PRMP, Gurrampode, Nalgonda District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, represented by its Special Chief Secretary, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.
2. The Engineer-in-Chief, Panchayat Raj, Erramanzil, Hyderabad.
3. Smt.N.Vinitha, Assistant Executive Engineer, Office of the Engineer-in-Chief, Panchayat Raj, Erramanzil, Hyderabad.
4. T.Vishnuvardhan Rao, S/o.Somaiah, Assistant Executive Engineer, RWS Panchayat Raj Sub-Division, Mothkur, Nalgonda District.
5. K.Vidhya Sagar, S/o.Venugopal, Assistant Executive Engineer, Municipal Corporation of Hyderabad (On deputation), Tankbund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari after calling for the records from A.P. Administrative Tribunal in O.A.No.6223/2002, O.A.No.2923/2002 and O.A.No.2878/2002, and declare the Common Order dated 9-9-2003 passed in O.A.No.6223/2002, O.A.No.2923/2002 and O.A.No.2878/2002 as illegal, arbitrary, unjust, contrary to G.O.Ms.No.313, dt.17-8-2002 issued by the 1st

respondent, and in violation of Articles 14,16 (4-A) and 21 of the Constitution of India consequently set aside the Common Order dated 9-9-2003 passed in O.A.No.6223/2002 O.A.No.2923/2002 and O.A.No.2878/2002.

Counsel for the Petitioner: MR.V.PADMANABHA RAO

Counsel for the Respondent Nos.1 and 2: G.P. FOR SERVICES-II.

Counsel for Respondent No.3: None appeared.

Counsel for Respondents 4 and 5: MR.V.MADHUSUDHANA RAO.

WRIT PETITION NO : 21292 of 2003

Between:

Smt. M. Vinatha, w/o. R. Upendernath Reddy, Assistant Executive Engineer, Office of the Engineer-in-Chief, Panchayat Raj Erramanzil, Hyderabad.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, represented by its Special Chief Secretary, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.
2 The Engineer-in Chief, Panchayat Raj, Erramanzil, Hyderabad.
3 ATMA Mujeeb, AEE Divisional Officer, Panchayat Raj, Bhuvanagiri, Nalgonda District.
4 B. Jawahar Reddy, AEE, CIEFL, Tarnaka, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue as writ of Certiorari calling for all the connected records including the judgment in OA No. 2923 of 2002 dated 09-09-2003 and quash the same as illegal, improper, unjust, arbitrary and contrary to law.

Counsel for the Petitioner: MR.GANGAIAH NAIDU APPEARING FOR MR.K.G.KRISHNA MURTHY

Counsel for the Respondent Nos.1 and 2:G.P. FOR SERVICES-II.

Counsel for the Respondent No.3: MR.M.RAJA MALLA REDDY

Counsel for the Respondent No.4: None appeared.

WRIT PETITION NO : 21300 of 2003

Between:

Smt M. Vinatha, w/o. R. Upendernath Reddy, Assistant Executive Engineer, Office of the Engineering-in-Chief, Panchayat Raj, Erramanzil,

Hyderabad.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, represented by its Special Chief Secretary, Panchayat Raj and Rural Development Departments Secretariat, Hyderabad
2 The Engineer-in-Chief, Panchayat Raj, Erramanzil, Hyderabad.
3 T. Vishnuvardhan Rao AEE RWS Panchayat Raj Sub-Division, Mothkur, Nalgonda District
4 K. Vidyasagar, AEE Office of MCH (On deputation) Tank Bund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Certiorari calling for all the connected records including the judgment in OA No. 2878 of 2002 dated 09-09-2003 passed by the APAT and quash the same as illegal, improper, unjust arbitrary and contrary to law.

Counsel for the Petitioner: MR.GANGAIAH NAIDU APPEARING FOR MR.K.G.KRISHNA MURTHY

Counsel for the Respondent Nos.1 and 2: G.P. FOR SERVICES-II.

Counsel for the Respondent Nos.3 and 4: MR.V.MADHUSUDHANA RAO.

The Court made the following:

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COMMON ORDER: (per GB.J.)

All these Writ Petitions can be decided by a common order as they rise common questions of law.

2. The petitioners, aggrieved by the orders of A.P. Administrative Tribunal (for brevity Tribunal) in O.A.No.6223 of 2002 and batch, dated 9.9.2003, have preferred the instant Writ Petitions before this Court.

3. It is the case of the petitioners that they were initially appointed as Draughtsmen Grade-III in 1981 and thereafter, and they were further promoted as Draughtsmen Grade-II in 1988. While so, during the year 1990, a scheme, viz., U.K. Scheme, was brought into effect for undertaking certain developmental works, in which the posts of Assistant Executive Engineers were created. Accordingly the petitioners were promoted on *ad hoc* basis as Assistant Executive Engineers on 25.3.1990 and as per the orders dated 16.4.1999, their services were also regularized with effect from 15.3.1991. Subsequently they were also declared as approved probationers in 1992. However, it appears that the unofficial respondents, who were directly recruited as Assistant Engineers, challenged the regularization of the services of the petitioners as Assistant Engineers on the ground that no provision exists under the relevant Rules for their promotion and therefore the order of regularization passed in respect of the petitioners should be set aside. The Tribunal, after considering the matter, allowed the O.As., filed by the unofficial respondents, against which the present batch of Writ Petitions have been filed.

4. It is the contention of the learned counsel Mr.Gangaiah Naidu and Mr.V.Padmanabha Rao appearing for the petitioners that the Tribunal has not taken into consideration the relevant Rules which are holding the field. It is submitted by them that a provision was made for appointment as Assistant Engineer either by direct recruitment or by transfer from other services in G.O.Ms.No.291, PL&PR Department, dated 27.3.1963. However, an amendment was brought to the said G.O., in G.O.Ms.No.662, Panchayat Raj

and Rural Development (Estt.III) Department, dated 24.11.1987. Thereafter all these Rules were superseded by the fresh Rules framed by the Government in G.O.Ms.No.15, Panchayat Raj and Rural Development (Estt.III) Department, dated 8.1.1999 and in the said Rules there was a provision relating to the appointment by transfer to the post of Assistant Engineer. Taking this aspect into consideration, the Tribunal observed that there was no provision for appointment by transfer to the post of Assistant Engineer and therefore the regularization orders as issued by the Government in G.O.Ms.No.1583, Panchayat Raj and Rural Development (Estt.III) Department, dated 4.10.2001 and G.O.RT.No.1584, Panchayat Raj and Rural Development (Estt.III) Department, dated 4.10.2001 were set aside. But, however, it is brought to the notice of this Court that the Government issued another G.O., viz., G.O.Ms.No.313, Panchayat Raj and Rural Development (Estt.III) Department, dated 17.8.2002, wherein a provision has brought into the Rules to the effect that the appointment by transfer can be made to the post of Assistant Engineer and the said amendment was brought into effect retrospectively from 8.1.1999. In view of the above situation, the learned counsel would submit that the Tribunal had not considered the crucial aspect and only observed that at the relevant time there were no Rules providing for appointment by transfer to the post of Assistant Engineer. Thus, they submit that non-consideration of the relevant material resulted in serious injustice to the petitioners and hence the order is liable to be set aside.

5. On the other hand the learned counsel for the respondents, who are the applicants before the Tribunal, submits that even under G.O.Ms.No.313, dated 17.8.2002 the petitioners are not entitled for regularization as the G.O. has not stated that the same will be implemented retrospectively and therefore the order of the Tribunal is correct. He further submits that even though the Tribunal did not consider the above G.O., yet the result would be the same.

6. The learned Government Pleader for Services-II submits that though all these material facts were brought to the notice of the Tribunal, yet the Tribunal has taken a view that at the relevant time there was no rule relating to appointment by transfer.

7. We find from the counter filed by the Government before the Tribunal suppressing all the material facts. It is often observed by this Court that the

Government is not placing the relevant material before the Tribunal when the matters are being heard by it. The counters are very cryptic and the relevant orders are also not being referred to in the counter filed by the Government. In such circumstances it is not uncommon that the orders would go against the interest of the Government.

8. In the instant case, the crucial document, which would have decided the entire *lis* is G.O.Ms.No.313, dated 17.8.2002. Admittedly the counter filed by the Government in the O.As., in April, 2003, by which time G.O.Ms.No.313, dated 17.8.2002 was available with the Government. It is not understood as to why this fact was not put it in the counter and the reasons are also not forthcoming. Thus, we find serious lapses on the part of the Government in not bringing the relevant material before the Tribunal, which resulted in miscarriage of justice. We are sure the Government will take appropriate steps in this regard and ensure that all the relevant facts will be put it in the counters filed by them.

9. In the cases on hand, the Tribunal without referring to G.O.Ms.No.313, dated 17.8.2002 held that there was no provision at the relevant time for appointment by transfer to the post of Assistant Engineer. The relevant para is extracted below:

> "All the applicants in the 3 O.As. were appointed as Assistant Executive Engineers in the year 1992, whereas the unofficial respondents while working as Draughtsmen, were appointed temporarily as Assistant Executive Engineers in the year 1990 and continued as such up to 1999 without being regularized either as Assistant Executive Engineers or without being sent back as Assistant Engineers, to which post, they would have been promoted under the rules as per their seniority, had they continued as Draughtsmen. The case of the unofficial respondents who were working temporarily as Assistant Executive Engineers were considered for regular promotion to the post of Assistant Engineers from the category of Draughtsmen and they were promoted as Assistant Engineers w.e.f. 15.3.91 i.e., from the date on which their juniors were promoted, but they did not join in the said posts and continued to work as Assistant Executive Engineers till the year 1999. At the request of the unofficial respondents to regularize their services at least in the category of Assistant Engineers, duly canceling their appointment as Assistant Executive Engineers, the Government accorded permission vide

GO.RT.No.505, dated 19.3.99, for regularization of services of the 3rd unofficial respondent in the category of Assistant Engineer w.e.f. 15.3.91, duly canceling his temporary appointment as Assistant Executive Engineer and the same was done through proceedings dated 7.4.99. Further, his probation in the cadre of Assistant Engineer was declared on 14.3.92. Likewise, the services of the 4th unofficial respondent were regularized in the category of Assistant Engineer w.e.f. 15.3.91 vide proceedings dated 16.4.99 and her probation was declared in the cadre of Assistant Engineer on 22.3.92".

10. But, in view of G.O.Ms.No.313, dated 17.8.2002, the matter has to be considered on a different scenario. Under those circumstances, we are inclined to set aside the order of the Tribunal and remit the matters to the Tribunal for fresh consideration duly taking into consideration G.O.Ms.No.662, dated 24.11.1997 and G.O.Ms.No.313, dated 17.8.2002.

11. The Writ Petitions are accordingly allowed and the matters are remitted back to the Tribunal for fresh consideration. This exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this order. It is made clear that all the issues are left open to be decided by the Tribunal basing on the contentions raised by the learned counsel for the parties. There shall be no order as to costs.

(G.BIKSHAPATHY, J.)

19th January, 2005.

(P.S.NARAYANA, J.)

SSR

That Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, Chief Justice, on this Wednesday, the Nineteenth day of January, Two Thousand and Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Special Chief Secretary, Panchyat Raj and Rural Development Department,The Government of Andhra Pradesh, Secretariat, Hyderabad.
2 The Engineer-in-Chief, Panchyat Raj, Erramanjil, Hyderabad.
3 The Registrar, A.P. Administrative Tribunal, Hyderabad.

4 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

5 2 CD copies.